

7269

R. Martin
Part 77

DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-189064

DATE: August 8, 1978

MATTER OF: Bokonon Systems, Inc.--Reconsideration

DISEST:

1. Request for reconsideration is denied where protester submits no arguments not previously considered and does not indicate any error of fact or law in prior decision.
2. Once protester has sought and has been denied disclosure from agency under Freedom of Information Act, 5 U.S.C. § 552 (1970) its sole remedy is by suit in U. S. District Court. Use by GAO of successful proposals not provided to protester does not constitute denial of due process. Resolution of bid protest by GAO is administrative procedure distinct from conduct of litigation in courts.
3. Once propriety of procurement action is questioned by protest, GAO may consider all relevant circumstances including those which may not have been considered by contracting officer.
4. No legal authority exists for granting protester's request for funds to engage counsel.

Bokonon Systems, Inc. (Bokonon) requests reconsideration of our decision in Bokonon Systems, Inc., B-189064, April 19, 1978, 78-1 CPD 303, which denied its protest of the rejection of its proposal by the Equal Employment Opportunity Commission (EEOC) under Request for Proposals No. EEO 76085.

The solicitation called for fixed price proposals to develop a research design for assessing the impact of EEOC programs on minorities and women. Although several procurement deficiencies were noted, the decision held that the inadequacies in Bokonon's proposal perceived by the evaluation panel provided sufficient justification for its rejection as technically unacceptable.

Although Bokonon strongly disagrees with the conclusions reached in our initial decision, this fact does not render the agency's evaluation arbitrary or illegal. Honeywell, Inc., B-181170, August 8, 1974, 74-2 CPD 87. Bokonon has submitted no facts, arguments or points of law which were not previously considered in our review of the record of this procurement. Therefore, its request provides no basis for our considering this matter further. United States Management Incorporated, B-189784, February 1, 1978, 78-1 CPD 92. It follows that no useful purpose would be served by granting Bokonon's request for a conference.

However, the request for reconsideration indicates areas of misunderstanding which merit comment. Bokonon contends that as the decision was based on a comparative examination of its proposal with the winning proposals, the failure to furnish Bokonon with copies of the winning proposals so that it could substantiate its protest violated its rights. We do not agree. The resolution of bid protests by this Office is an administrative procedure distinct from the conduct of litigation in the courts. To satisfy the due process requirements in administrative proceedings of this nature, it is not necessary that the protester be apprised of all information in the record. Once a protester has sought and has been denied disclosure from the agency under the provisions of the Freedom of Information Act, 5 U.S.C. § 552 (1970) its sole remedy is by suit in the United States District Court. See Systems Research Laboratories, Inc.--Reconsideration, B-186242, May 5, 1978, 78-1 CPD 341 and the cases cited therein.

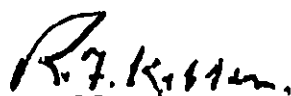
The decision states that unlike the successful proposals, Bokonon's proposal did not show the proposed staff time by discipline except in the case of four consultants. Among other things, Bokonon contends that the agency did not advance this point as a reason for its rejection of Bokonon's proposal. The record clearly shows that one of the primary reasons for rejection was that Bokonon's proposal did not indicate the depth and breadth of expertise required in the various disciplines. In any event, once the propriety of a procurement action had been questioned by the filing of a protest, this

Office is obligated to consider all relevant circumstances including any which may not have been considered initially by the contracting officer. Juanita H. Burns, et al., 55 Comp. Gen. 587, 588 (1975), 75-2 CPD 400. Our purpose in reviewing proposals is to determine if any rational basis exists for the determinations of the agency. Tracor Jitco, Inc., 55 Comp. Gen. 499 (1975), 75-2 CPD 344. Thus, if a rational basis exists for the agency's technical evaluation and is consistent with the stated evaluation criteria, this Office will not disturb it even though the agency may not have cited specifically that basis to support its evaluation.

Bokonon also contends that once this Office determined that the agency was remiss in failing to properly and concurrently document in the procurement file the rationale for its decisions, the matter was then "clearly a case for GAO investigators." By that, we assume Bokonon means the case should have been turned over to the auditors of this Office for further investigation. We do not agree because we were in a position to decide whether there was merit to the protest on the basis of our review of the proposals contained in the record.

Finally, Bokonon requests funds from this Office in order to engage counsel to defend its rights. We know of no legal authority upon which such a request could be granted.

Accordingly, our prior decision is affirmed.


Deputy Comptroller General
of the United States